



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2013-0305]

RIN 1625-AA08

Special Local Regulations for Marine Events, Atlantic City

Offshore Race, Atlantic Ocean; Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement date of a special local regulation for one specific recurring marine event in the Fifth Coast Guard District. This regulation applies to only one recurring marine event, held on the Atlantic Ocean, offshore of Atlantic City, New Jersey. The marine event formerly originated on the third Sunday in July, but now is on the forth Sunday in June; the special local regulation is necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Atlantic Ocean near Atlantic City, New Jersey, during the event.

DATES: This rule will be effective on June 23, 2013, only.

ADDRESSES: Documents mentioned in this preamble are part of

docket [USCG-2013-0305]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Corrina Ott, U.S. Coast Guard Sector Delaware Bay, Chief of Waterways Management Division; telephone 215-271-4902, e-mail corrina.ott@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The regulation for this marine event is located at 33 CFR 100.501, Table to § 100.501, section (a.) line 4.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to minimize potential danger to the public during the event. The potential dangers posed by marine events conducted on the Atlantic Ocean, near Atlantic City, with other vessel traffic makes a special local regulation necessary to provide for the safety of participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have this regulation in effect during the event. In addition, it is impracticable to provide for a notice and comment period because the Coast Guard received late notice from the event planner of this change in date. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of navigational restrictions. On scene Coast Guard and local law enforcement vessels will also provide actual notice to mariners.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. The Coast Guard did not receive information from the event sponsor early enough to allow 30 days after publication before making this rule effective. This final rule is necessary to protect the public and race participants during the regatta, and therefore, must be effective by the start of the event on June 23, 2013.

B. Basis and Purpose

Offshore Performance Association sponsors an annual offshore race held on the third Sunday in July on the waters of the Atlantic Ocean at Atlantic City, New Jersey.

The regulation listing annual marine events within the Fifth Coast Guard District and special local regulations locations is 33 CFR 100.501. The Table to § 100.501 identifies special local regulations by COTP zone, with the COTP Delaware Bay zone listed in section "(a.)" of the Table. The Table to § 100.501, at section (a.) event Number "4" describes the enforcement date and regulated location for this marine event.

The date listed in the Table has the marine event on the third Sunday in July. However, this temporary rule changes the marine event date to the forth Sunday in June.

A fleet of spectator vessels is anticipated to gather nearby to view the marine event. Due to the need for vessel control

during the marine event vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels. Under provisions of 33 CFR 100.501, during the enforcement period, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

C. Discussion of the Final Rule

The Coast Guard will temporarily suspend the regulation listed in Table to § 100.501, section (a.) event Number 4, and insert this temporary regulation at Table to § 100.501, at section (a.) as event Number "14", in order to reflect that the marine event will be held on June 23, 2013. This special local regulation will be enforced from 10 a.m. until 5 p.m.

The regulated area of this special local regulation includes all the waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21'50" N, longitude 074°24'37" W, to latitude 39°20'40" N, longitude 074°23'50" W, thence southwesterly to latitude 39°19'33" N, longitude 074°26'52" W, thence northwesterly to a point along the shoreline at latitude 39°20'43" N, longitude 074°27'40" W, thence northeasterly along the shoreline to latitude 39°21'50" N, longitude 074°24'37" W.

This special local regulation will temporarily restrict general navigation in the regulated area during the marine event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the effective period. The regulated area is needed to control vessel traffic during the event for the safety of participants and transiting vessels.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this rule will temporarily restrict vessel traffic from transiting a portion of the Atlantic Ocean off the shore of Atlantic City, New Jersey during the specified event, the effect of this regulation will not be significant due to the limited

duration that the regulated area will be in effect. Extensive advance notifications will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking changes the regulated area for the Atlantic Ocean, Atlantic City, Offshore Race for June 23, 2013 only and does not change the permanent regulated area that has been published in 33 CFR 100.501, Table to § 100.501 at portion "a" event Number "4". In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels

intending to transit or anchor in the Atlantic Ocean, off the shore of Atlantic City, where marine events are being held. This regulation will not have a significant impact on a substantial number of small entities because it will only be in effect from 10 a.m. to 5 p.m. on June 23, 2013 in the regulated area. The Captain of the Port will ensure that small entities are able to operate in the regulated area when it is safe to do so. In some cases, vessels will be able to safely transit around the regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture

Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without

jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and

does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a

significant effect on the human environment. This rule involves the establishment of a special local regulation within 33 CFR Part 100. It is necessary to provide for the safety of the general public and event participants from potential hazards associated with the movement of vessels near the event area. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

2. At § 100.501, further amend the Table to § 100.501, as revised May 21, 2013 (78 FR 29632), as follows:

a. Under "(a) Coast Guard Sector Delaware Bay - COTP Zone,"

suspend entry 4.

b. Under, "(a) Coast Guard Sector Delaware Bay - COTP Zone,"
add temporary entry 16 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth
Coast Guard District.

* * * * *

(a.) Coast Guard Sector Delaware Bay - COTP Zone				
No.	Date	Event	Sponsor	Location
*	*	*	*	* * *
16	June--4 th Sunday.	OPA Atlantic City Offshore Race	Offshore Performance Assn. (OPA)	The waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21'50" N, longitude 074°24'37" W, to latitude 39°20'40" N, longitude 074°23'50" W, thence southwesterly to latitude 39°19'33" N, longitude 074°26'52" W, thence northwesterly to a point along the shoreline at latitude 39°20'43" N, longitude 074°27'40" W, thence northeasterly along the shoreline to latitude 39°21'50" N, longitude 074°24'37" W.
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Dated: May 3, 2013

K. Moore,
Captain, U.S. Coast Guard
Captain of the Port Delaware Bay.

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Date: 06/11/2013]